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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Application by Qwest Communications)	
International Inc., for Authorization To)	WC Docket No. 03-90
Provide In-Region, InterLATA Services in)	
Minnesota)	

MEMORANDUM OPINION AND ORDER

Adopted: June 25, 2003

Released: June 26, 2003

By the Commission: Commissioners Copps and Adelstein issuing separate statements.

TABLE OF CONTENTS

	Para.
I. INTRODUCTION.....	1
II. BACKGROUND	4
A. COMPLIANCE WITH UNBUNDLING RULES.....	8
III. PRIMARY ISSUES IN DISPUTE.....	10
A. CHECKLIST ITEM 2 – UNBUNDLED NETWORK ELEMENTS	12
1. Operations Support Systems	15
2. UNE Combinations	40
3. Pricing of Unbundled Network Elements	41
IV. OTHER ITEMS	50
A. CHECKLIST ITEM 1 – INTERCONNECTION	50
B. CHECKLIST ITEM 4 – UNBUNDLED LOCAL LOOPS	53
C. CHECKLIST ITEM 14 – RESALE	58
D. REMAINING CHECKLIST ITEMS (3, 5-13)	59
V. COMPLIANCE WITH SECTION 271(c)(1)(A).....	60
VI. SECTION 272 COMPLIANCE.....	62
VII. PUBLIC INTEREST ANALYSIS	66
A. ASSURANCE OF FUTURE COMPLIANCE	69
B. UNFILED INTERCONNECTION AGREEMENTS.....	73
1. Background	75

2. Discussion	80
VIII. SECTION 271(d)(6) ENFORCEMENT AUTHORITY	94
IX. CONCLUSION	97
X. ORDERING CLAUSES	98
APPENDIX A – LIST OF COMMENTERS	
APPENDIX B – MINNESOTA PERFORMANCE DATA	
APPENDIX C – STATUTORY REQUIREMENTS	

I. INTRODUCTION

1. On March 28, 2003, Qwest Communications International Inc. (Qwest) filed an application pursuant to section 271 of the Communications Act of 1934, as amended,¹ for authority to provide in-region, interLATA services originating in the state of Minnesota.² In this Order, we grant the application based on our conclusion that Qwest has taken the statutorily required steps to open its local exchange markets in Minnesota to competition.

2. In ruling on Qwest's application, we wish to acknowledge the effort and dedication of the Minnesota Public Utilities Commission (Minnesota Commission), which has expended significant time and effort overseeing Qwest's implementation of the requirements of section 271. The Minnesota Commission, working independently and with the Regional Oversight Committee (ROC), a cooperative group of state commissions in the Qwest region, conducted proceedings to determine Qwest's section 271 compliance.³ In particular, the ROC worked together on the design and execution of the regional operations support systems (OSS) testing. The Minnesota Commission also conducted state-specific pricing proceedings, and adopted the performance measurements and standards developed through the ROC, including a Performance Assurance Plan (PAP) based on Qwest's PAP in Colorado.⁴ As the Commission has repeatedly recognized, state proceedings demonstrating a commitment to advancing the pro-

¹ We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as the Communications Act or the Act. 47 U.S.C. §§ 151 *et seq.*

² See *Application by Qwest Communications International Inc. for Authority to Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90 (filed Mar. 28, 2003) (Qwest Application).

³ See Minnesota Commission Comments at 7-8.

⁴ *Id.* at 5-6; see also Qwest Application, App. A, Tab 25, Declaration of Jerrold L. Thompson, paras. 6-20 (Qwest Thompson Decl.) (detailing pricing proceedings and orders); Qwest Application, App. A, Tab 26, Declaration of Mark S. Reynolds at paras. 8, 11 (Qwest Reynolds Decl.) (detailing PAP and performance measurement proceedings).

competitive purposes of the Act serve a vitally important role in section 271 proceedings.⁵ While the Minnesota Commission was unable to reach a collective determination on certain issues, we commend the state for its enormous time and effort in developing this application.

3. The outstanding work of the Minnesota Commission and Qwest's extensive efforts to open its local exchange network to competition have resulted in competitive entry in Minnesota. Qwest estimates that, as of December 31, 2002, competitive LECs served approximately 26.7 percent of all lines in Minnesota, including 106,827 UNE-Loops and 84,428 UNE-Platform lines.⁶ We are confident that the hard work of the Minnesota Commission to ensure that the local exchange market in Minnesota is open to competition will benefit consumers by making increased competition in all telecommunications service markets possible in this state. We are also confident that the Minnesota Commission, as it addresses allegations of past violations of the statute by Qwest and considers any future problems that may develop, will continue to ensure that Qwest meets its statutory obligations.

II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the Bell Operating Companies (BOCs) demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long distance service. Under section 271, Congress requires that the Commission review BOC applications to provide such service in consultation with the affected state and the Attorney General.⁷

5. The Minnesota Commission independently reviewed the record developed in the ROC; conducted open proceedings with ample opportunities for participation by interested third parties; conducted state-specific pricing procedures to establish initial rates for unbundled network elements (UNEs) and interconnection; and reviewed, modified, and adopted a PAP.⁸ The Minnesota Commission also conducted an enforcement proceeding concerning "unfiled

⁵ See *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17421, para. 3 (2001) (*Verizon Pennsylvania Order*), appeal pending, *Z-Tel Communications v. FCC*, No. 01-1461 (D.C. Cir. filed Oct. 17, 2001); *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 2 (2001) (*Verizon Massachusetts Order*) *aff'd sub nom. WorldCom, Inc. v. FCC*, 308 F.3d 1 (D.C. Cir. 2002).

⁶ Qwest Application, App. A, Tab 2, Declaration of David L. Teitzel (Qwest Teitzel Decl.) at para. 15.

⁷ 47 U.S.C. § 271(d)(2)(A)-(B).

⁸ Minnesota Commission Comments at 2-6.

agreements” between Qwest and certain competitive LECs, in which it found that the interconnection agreements should have been filed pursuant to section 252 of the Act, that Qwest’s failure to do so constituted discrimination in favor of those particular competitive LECs, and that financial penalties were warranted.⁹

6. Although the Minnesota Commission determined that Qwest has satisfied 12 of the 14 checklist items, it did not reach a collective determination with respect to checklist items 2 and 14, pertaining to unbundled network elements (UNEs) and resale, respectively, and public interest issues.¹⁰ Specifically, two out of the four voting commissioners found that issues related to the accuracy of service usage reports and wholesale bills warrant a finding of checklist noncompliance with respect to item 2. Additionally, three out of the four voting commissioners found that issues related to unfiled agreements indicated that Qwest was not in compliance with checklist item 14 and the public interest requirement.¹¹ The issues raised by the Minnesota Commission are discussed in detail below.¹²

7. The U.S. Department of Justice recommends approval of Qwest’s application, although deferring to the Commission’s prior decision regarding the relevance of discriminatory interconnection agreements on the section 271 process.¹³ The Department of Justice concludes opportunities are available to competing carriers serving business and residential customers.¹⁴ Although only a small portion of residential customers are served via the UNE-Platform, the Department of Justice does not believe there are any material obstacles to such entry created by Qwest.¹⁵

A. Compliance With Unbundling Rules

8. One part of the required showing, as explained in more detail below, is that the applicant satisfies the Commission’s rules governing unbundled network elements. It is necessary to clarify, for the purpose of evaluating this application, which network elements we expect Qwest to demonstrate that it provides on an unbundled basis, pursuant to section

⁹ Minnesota Commission Comments, App. E, Order Assessing Penalties, Minnesota Docket No. P-42YC-02-197 (Feb. 28, 2003) at 3, 4-6.

¹⁰ Minnesota Commission Comments at 2.

¹¹ *Id.*; see also Minnesota Commission Comments, Separate Statement of Commissioner Reha at 25-30, Separate Joint Statement of Commissioners Scott/Johnson at 32-37.

¹² See *infra* Sections III.A.1 (Operations Support Systems), IV.C (Resale), and VII.B (Unfiled Interconnection Agreements).

¹³ Department of Justice Evaluation at 2-3. The Department of Justice also recommends that the Commission investigate the issues raised by commenters regarding billing completion notifiers (BCNs) and high reject rates, which we discuss in Section III.A.1 (Operations Support Systems) *infra*. *Id.* at 2 n.5, 7 n.24.

¹⁴ *Id.* at 6-7.

¹⁵ *Id.*

251(c)(3) and checklist item 2. In the *UNE Remand and Line Sharing Orders*, the Commission established a list of UNEs which incumbent LECs were obliged to provide: (1) local loops and subloops; (2) network interface devices; (3) switching capability; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) operations support systems; and (7) the high frequency portion of the loop.¹⁶ However, the D.C. Circuit vacated these orders and instructed the Commission to reevaluate the network elements subject to the unbundling requirement.¹⁷ The court's mandate was stayed first until January 3, 2003 and then until February 20, 2003. On February 20, 2003, the Commission adopted new unbundling rules as part of our Triennial Review proceeding.¹⁸ These rules, however, have not yet become effective.

9. Although the former unbundling rules vacated by the D.C. Circuit were not in force at the time Qwest filed its application in this proceeding, Qwest states that it continues to provide nondiscriminatory access to these network elements.¹⁹ As the Commission found in the *Bell Atlantic New York Order*, we believe that using the network elements identified in the former unbundling rules as a standard in evaluating Qwest's application, filed during the interim period between the time the rules were vacated by the D.C. Circuit and the effective date of the new rules, is a reasonable way to ensure that the application complies with the checklist requirements.²⁰ We find it significant that no commenter disputes that Qwest should be required to demonstrate that it provides these network elements in a nondiscriminatory way. Accordingly, for the purposes of this application, we will evaluate whether Qwest provides

¹⁶ See 47 C.F.R. § 51.319; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*); *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

¹⁷ See *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), cert. denied, 123 S.Ct. 1571 (2003).

¹⁸ See *FCC Adopts New Rules For Network Unbundling Obligations Of Incumbent Local Phone Carriers*, News Release, (rel. Feb. 20, 2003) (announcing adoption of an Order on Remand and Further Notice of Proposed Rulemaking in CC Docket No. 01-338, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*) (Triennial Review News Release).

¹⁹ See Qwest Application at 25.

²⁰ See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3966-67, para. 30 (1999) (*Bell Atlantic New York Order*), aff'd, *AT&T Corp v. FCC*, 220 F.3d 607 (D.C. Cir. 2000). A similar procedural situation was presented in the *Bell Atlantic New York* proceeding. Bell Atlantic filed its application for section 271 authorization in New York after the unbundling rules had been vacated but before the *UNE Remand Order* had taken effect and, thus, at a time when no binding unbundling rules were in effect. Bell Atlantic suggested, and the Commission agreed, that it would be reasonable for the Commission to use the original seven network elements identified in the former unbundling rules in evaluating compliance with checklist item 2 for the application. See *id.* at 3966-67, paras. 29-31.

nondiscriminatory access to the network elements identified under the former unbundling rules.²¹ We emphasize that, on an ongoing basis, Qwest must comply with all of the Commission's rules implementing the requirements of sections 251 and 252 upon the dates specified by those rules.²²

III. PRIMARY ISSUES IN DISPUTE

10. As in recent section 271 orders, we will not repeat here the analytical framework and particular legal showing required to establish compliance with every checklist item. Rather, we rely upon the legal and analytical precedent established in prior section 271 orders,²³ and we attach comprehensive appendices containing performance data and the statutory framework for approving section 271 applications.²⁴ Our conclusions in this Order are based on performance data as reported in carrier-to-carrier reports reflecting service in the period from November 2002 through March 2003.

11. We focus in this Order on the issues in controversy in the record. Accordingly, we begin by addressing issues concerning Qwest's compliance with checklist item number 2, access to UNEs. Next, we address checklist items 1, 4, and 14, which cover interconnection, access to unbundled local loops, and resale, respectively. The remaining checklist requirements are discussed briefly, as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that Qwest has satisfied these requirements. Finally, we discuss issues concerning compliance with Track A, section 272 and the public interest requirement.

A. Checklist Item 2 – Unbundled Network Elements

12. Checklist item 2 of section 271 states that a BOC must provide “[n]ondiscriminatory access to network elements in accordance with the requirements of sections

²¹ The new rules adopted in the Triennial Review proceeding will not take effect until after release of this Order. Consistent with the *Bell Atlantic New York Order*, we will not require Qwest to demonstrate compliance with rules that have yet to take effect. *See id.* at 3967, para. 31.

²² *See Application by SBC Communications Inc., Southwestern Bell Tel. Co. and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18368, para. 29 (2000) (*SWBT Texas Order*); *Bell Atlantic New York Order*, 15 FCC Rcd at 3967, para. 3.

²³ *See, e.g., Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001); *SWBT Texas Order*, 15 FCC Rcd at 18359-61, paras. 8-11; *Bell Atlantic New York Order*, 15 FCC Rcd at 3961-63, paras. 17-20; *see also* Appendix C (Statutory Requirements).

²⁴ *See generally* Appendix B (Minnesota Performance Data), and Appendix C.

251(c)(3) and 252(d)(1)” of the Act.²⁵ Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”²⁶ Based on the evidence in the record, we conclude that Qwest has satisfied the requirements of checklist item 2.²⁷ In reaching this conclusion, we recognize that the Minnesota Commission did not reach a collective determination with regard to this checklist item.²⁸

13. In this section, we address aspects of this checklist item that raised significant issues concerning whether Qwest’s performance demonstrates compliance with the Act: (1) Operations Support Systems (OSS); (2) provisioning of UNE combinations; and (3) UNE pricing. Aside from OSS, UNEs that Qwest must make available under section 251(c)(3) are listed as separate items on the competitive checklist, and are addressed below under other checklist items, as are any provisioning issues that may be in dispute.²⁹

14. As an initial matter, we note that the Minnesota Commission’s failure to reach a collective decision on checklist item 2 was in part based on the Minnesota Administrative Law Judge’s (ALJ’s) report finding that, for checklist item 2, Qwest relied on UNE-Star³⁰ as its UNE product.³¹ The Minnesota ALJ concluded that Qwest’s application for approval should not be

²⁵ 47 U.S.C. § 271(c)(2)(B)(ii).

²⁶ 47 U.S.C. § 251(c)(3).

²⁷ See Qwest Application at 25-31. See generally Qwest Application, App. A, Tab 6, Declaration of Lynn M.V. Notarianni and Christie L. Doherty (Qwest Notarianni/Doherty Decl.).

²⁸ Minnesota Commission Comments at 9; see also Minnesota Commission Comments, Separate Statement of Chairman Koppendray at 20-21; Minnesota Commission Comments, Separate Statement of Commissioner Reha at 26; Minnesota Commission Comments, Separate Joint Statement of Commissioners Scott/Johnson at 32-33.

²⁹ 47 U.S.C. § 271(c)(2)(B). For example, unbundled loops, transport, and switching are listed separately as checklist items 4, 5, and 6.

³⁰ UNE-Star is a product, unique to Qwest, that combines elements of resale orders and UNE-Platform orders. Parties have also referred to UNE-Star as UNE-E or UNE-Eschelon or UNE-McLeod or UNE-M. See *Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, WC Docket No. 02-134, *Memorandum Opinion and Order*, 17 FCC Rcd 26303, 26355, para. 86 n.300 (2002) (*Qwest 9-State Order*). Although AT&T argues that other carriers cannot order UNE-Star products, the record shows that the Eschelon and McLeod agreements containing UNE-Star provisions were filed with the Minnesota Commission and are available for opt-in by other carriers. See Letter from Melissa Newman, Vice-President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed June 23, 2003) at 1 (Qwest June 23A *Ex Parte* Letter); Letter from Robert W. Quinn, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed June 18, 2003) at 1-4 (AT&T June 18 *Ex Parte* Letter); Letter from Robert W. Quinn, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed June 24, 2003) at 1-3 (AT&T June 24 *Ex Parte* Letter).

³¹ Minnesota Commission Comments at 9; see also AT&T Reply at 25.

granted until all UNE-Star lines are converted to UNE-Platform.³² Significantly, in the period since the Minnesota ALJ conducted its investigation, Qwest has converted the vast majority of its UNE-Star customers to UNE-Platform.³³ We note that the decision to convert lines from UNE-Star to UNE-Platform does not lie solely with Qwest.³⁴ Therefore, we do not require Qwest to convert all of its UNE-Star lines to UNE-Platform lines in order to be checklist compliant.

1. Operations Support Systems

15. Under checklist item 2, a BOC must demonstrate that it provides nondiscriminatory access to the five OSS functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing.³⁵ In addition, a BOC must show that it provides nondiscriminatory access to UNEs and that it has an adequate change management process in place to accommodate changes made to its systems.³⁶ Based on the evidence in the record, we find that Qwest provides nondiscriminatory access to OSS in Minnesota.³⁷ Consistent with prior Commission orders, we do not address each OSS element in detail where our review of the record satisfies us that there is little or no dispute that Qwest meets the nondiscrimination requirements.³⁸ First, we discuss the relevance of Qwest's regionwide OSS. Second, we focus our discussion on those issues in controversy, which in this instance primarily involve certain elements of Qwest's pre-ordering, ordering, maintenance and repair, wholesale billing, and change management practices.

³² Minnesota Commission Comments at 9.

³³ Qwest Reply, Attach., Tab 2, Reply Declaration of Lynn M.V. Notarianni and Christie L. Doherty (Qwest Notarianni/Doherty Reply Decl.) at Ex. CLD-3 (showing that, as of the end of March 2003, 93% of POTS lines and 69.4% of POTS/Centrex lines were UNE-Platform lines rather than UNE-Star lines).

³⁴ Most competitive LECs have converted their POTS lines from UNE-Star to UNE-Platform, although several competitive LECs still are using Centrex lines from the UNE-Star product offering. *Id.* Although AT&T argues, based on a recent filing made by Echelon in the Arizona section 271 proceeding, that carriers will be reluctant to migrate away from UNE-Star because UNE-Star provides access to certain features not available on the UNE-Platform, we find that Qwest does provide access to those features through the UNE-Platform in Minnesota. *See* Qwest June 23A *Ex Parte* Letter at 2. Additionally, we note that the Minnesota ALJ's concerns are based on billing accuracy issues related to UNE-Star, which are discussed *infra*, Section III.A.1.e (Billing).

³⁵ *See Qwest 9-State Order*, 17 FCC Rcd at 26320, para. 34; *Bell Atlantic New York Order*, 15 FCC Rcd at 3989, para. 82. The Commission has defined OSS as the various systems, databases, and personnel used by incumbent LECs to provide services to their customers. *See SWBT Texas Order*, 15 FCC Rcd at 18396-97, para. 92.

³⁶ *See Qwest 9-State Order*, 17 FCC Rcd at 26320, para. 34; *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102 and n.280.

³⁷ *See* Qwest Application at 25-31. *See generally* Qwest Notarianni/Doherty Decl.

³⁸ *See Verizon Connecticut Order*, 16 FCC Rcd at 14151, para. 9.

a. **Relevance of Qwest's Regionwide OSS**

16. Consistent with our precedent, Qwest relies in this application on evidence concerning its regionwide OSS. Specifically, Qwest asserts that its OSS in Minnesota is the same as its OSS in the entire 13-state region that participated in the ROC test.³⁹ The 13 participating states in Qwest's local service region initiated a collaborative process to design an overall plan for ensuring that Qwest's OSS and related databases and personnel are available to competitive LECs in an open and nondiscriminatory manner.⁴⁰ As discussed in the *Qwest 9-State Order*, to support its claim that its OSS is the same across all states, Qwest relies on the comprehensive BearingPoint test.⁴¹ BearingPoint, in addition to administering the overall test, performed a regional differences assessment (RDA), which showed that Qwest's ordering, provisioning, maintenance and repair, and competitive LEC relationship management and infrastructure are materially consistent across the region.⁴²

17. Where Qwest provides evidence that a particular system that was reviewed and approved in one of the twelve states where Qwest received section 271 approval is also used in Minnesota, our review will be informed by our findings in the *Qwest 9-State Order* and the *Qwest 3-State Order*.⁴³ We find that Qwest, through the BearingPoint test and its declarations, provides sufficient evidence that its OSS in Minnesota is the same as in those 12 states.

18. In reaching our conclusion that Qwest has demonstrated it provides nondiscriminatory access to its OSS, we rely on detailed evidence provided by Qwest in this proceeding.⁴⁴ We base this determination on Qwest's actual performance in the state of Minnesota. Consistent with our past practice, we note that in the course of our review, we look for patterns of systemic performance disparities that have resulted in competitive harm or that have denied new entrants a meaningful opportunity to compete.⁴⁵ Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.⁴⁶

³⁹ Qwest Notarianni/Doherty Decl., paras. 18-55.

⁴⁰ *Id.* at para. 19.

⁴¹ See *Qwest 9-State Order*, 17 FCC Rcd at 26321, para. 36. The third-party test was conducted by Bearing Point f/k/a KPMG Consulting, Inc.

⁴² See *id.*

⁴³ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6253-54, para. 35. Indeed, to the extent that certain issues have been previously briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for relitigating and reconsidering those issues. *Id.*

⁴⁴ See Qwest Application at 25-31; Qwest Notarianni/Doherty Decl., paras. 56-548; see also Appendix B.

⁴⁵ See *Qwest 9-State Order*, 17 FCC Rcd at 26321-22, para. 37.

⁴⁶ See *id.*

b. Pre-ordering

19. Based on the evidence in the record, we find that Qwest demonstrates it provides carriers with nondiscriminatory access to its OSS pre-ordering functions. We disagree with AT&T's allegation that deficiencies in Qwest's Electronic Data Interchange (EDI) interface place AT&T at a competitive disadvantage.⁴⁷ Specifically, AT&T states that defects in Qwest's EDI interface create an impediment to AT&T's market entry in Minnesota by forcing AT&T to use Qwest's Graphical User Interface (GUI), which is not integratable with AT&T's own systems.⁴⁸ As we found in both the *Qwest 9-State Order* and the *Qwest 3-State Order*, other competitive LECs have been able to successfully integrate their systems with Qwest's EDI interfaces.⁴⁹ Therefore, we do not find that the issues raised by AT&T regarding Qwest's EDI and GUI interfaces rise to the level of checklist noncompliance.

c. Ordering

20. Based on the evidence in the record, we find that Qwest demonstrates it provides nondiscriminatory access to its ordering systems.⁵⁰ Specifically, as discussed below, we conclude that Qwest has shown that it is able to flow through orders properly, establish adequate processes and procedures for providing billing completion notices (BCNs) to competitive LECs,⁵¹ and process orders through its EDI interface.⁵²

⁴⁷ AT&T Comments at 17-18.

⁴⁸ AT&T Comments at 18; AT&T Comments, Declaration of John F. Finnegan, paras. 7-9 (AT&T Finnegan Decl.) (stating that the design of Qwest's customer service record (CSR) makes it difficult for AT&T to auto-populate information into a local service request (LSR)).

⁴⁹ See *Qwest 9-State Order*, 17 FCC Rcd at 26327, para. 45; *Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services, in New Mexico, Oregon, and South Dakota*, WC Docket No. 03-11, Memorandum Opinion and Order, FCC 03-81, para. 55 (*Qwest 3-State Order*); see also *Qwest Reply* at 9.

⁵⁰ *Qwest Notarianni/Doherty Decl.*, paras. 156-305.

⁵¹ The Department of Justice noted the critical importance to competitive LECs of timely and accurate BCNs and mentioned that the Commission should review AT&T's claims that Qwest is not adequately providing BCNs. Department of Justice Evaluation at 7 n.24.

⁵² We note that other ordering issues related to documentation are discussed in Change Management, below. Additionally, we conclude that MCI's allegation that several MCI customers do not appear to be receiving MCI branding when they call directory or operator assistance does not warrant a finding of checklist noncompliance. MCI Reply at 4. The record shows that MCI alerted Qwest of the branding problem on May 1, 2003, and Qwest subsequently resolved the issue on May 9, 2003. Letter from Melissa Newman, Vice President - Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1-2 (filed May 16, 2003) (*Qwest May 16A Ex Parte Letter*). In addition, we do not find that MCI's recent allegations that Qwest's business rules do not clearly document how MCI should request that "Directory Assistance Call Completion" (DACC) be blocked for MCI customers rise to the level of checklist noncompliance. See Letter from Lori Wright, Attorney - Federal Advocacy, MCI, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 2-3 (filed June 13, 2003) (*MCI June 13 Ex Parte Letter*). The record shows (continued....)

21. *Order Flow-through.*⁵³ As an initial matter, the Commission has looked to order flow-through as a potential indicator of a wide range of problems that underlie a determination of whether a BOC provides nondiscriminatory access to its OSS.⁵⁴ The Commission has not relied on flow-through rates as the sole indicator of nondiscrimination, however, and thus has not limited its analysis of a BOC's ordering process to a review of its flow-through performance data.⁵⁵

22. Although Qwest failed to reach benchmarks with respect to electronic flow-through metrics in Minnesota, we do not find that this warrants a finding of checklist noncompliance.⁵⁶ We note that Qwest's overall performance with respect to electronic flow-through in Minnesota is superior to flow-through achieved during the pendency of both the *Qwest 9-State Order* and the *Qwest 3-State Order*.⁵⁷ Moreover, Qwest's flow-through rates are comparable to those of other BOCs that the Commission has previously approved.⁵⁸ Although we do not rely on it, we take comfort in Qwest's April 7, 2003 fix to address UNE-Platform

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that Qwest provides adequate documentation describing how to block DACC. See Letter from Melissa Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1-2 (filed June 18, 2003) (Qwest June 18A *Ex Parte* Letter); see also MCI June 13 *Ex Parte* Letter at 2. Furthermore, the record shows that Qwest and MCI have reached an agreement that will result in DACC blocking being implemented for all new and existing MCI end users. Qwest June 18A *Ex Parte* Letter at 2.

⁵³ Flow-through measures the percentage of orders that pass through an incumbent's ordering systems without the need for manual intervention.

⁵⁴ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4035, para. 162.

⁵⁵ See *Qwest 9-State Order*, 17 FCC Rcd at 26369-70, para. 106.

⁵⁶ See PO-2B-1 (Electronic Flow-through for all Eligible LSRs Received via IMA, Resale) showing an average of 93.43% compared to a 95% benchmark and PO-2B-1 (Electronic Flow-through for all Eligible LSRs Received via IMA, UNE-P, POTS) showing an average of 84.37% compared to a 90% benchmark from November to December 2002 and a 95% benchmark from January 2003 to March 2003.

⁵⁷ See *Qwest 9-State Order*, 17 FCC Rcd at 26587-811, Appendices B-J; *Qwest 3-State Order*, Appendices B-E.

⁵⁸ See, e.g., *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02-61, Memorandum Opinion and Order, 17 FCC Rcd 11659, 11703-30, Appendix B (2002) (*Verizon Maine Order*); *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, 12372-402, Appendix B (2002) (*Verizon New Jersey Order*).

flow-through problems associated with new connect LSRs and Qwest's May 1, 2003 system modifications to address minor flow-through problems with resale orders.⁵⁹

23. *Billing Completion Notices.* The record shows that competitive LECs have nondiscriminatory access to billing completion notices.⁶⁰ Thus, we reject competitive LEC allegations that Qwest has not established adequate processes and procedures for providing BCNs to competitive LECs that request them.⁶¹ Specifically, we reject competitive LEC allegations that Qwest's procedure of sending BCNs at the service order level instead of the LSR level places competitive LECs at a competitive disadvantage.⁶² Even though Qwest is not providing BCNs in the format which competitive LECs would prefer, Qwest is providing to competitive LECs all of the information that Qwest is required to provide.⁶³ Moreover, to the extent that a sufficient number of competitive LECs would prefer a different format, they may request one through the change management process. Indeed, although we do not rely on it, we note that AT&T has submitted a change request through Qwest's change management process to modify Qwest's processes to provide only one BCN per LSR.⁶⁴

24. Furthermore, we reject AT&T's argument that Qwest fails to provide competitive LECs with documentation that will allow competitive LECs to correctly set up their own systems in order to receive BCNs.⁶⁵ Qwest states that while it did remove some of the documentation regarding BCNs from its IMA Release 11.0, the removed information is not needed by competitive LECs to program an EDI interface to receive BCNs.⁶⁶ Additionally, when AT&T pointed out that Qwest had removed the information, Qwest stated that the same information could be found in the documentation present in IMA Release 10.0.⁶⁷ Furthermore, once Qwest realized that the competitive LEC community was seeking the documentation in IMA Release

⁵⁹ Qwest Notarianni/Doherty Reply Decl., paras. 22-23. In February 2003, 53 rate zone orders did not flow through because certain rate zone information was not included on new connect LSRs. *Id.* Qwest implemented a fix for this rate zone issue on April 7, 2002, with the release of IMA Release 12.0. *Id.*

⁶⁰ Qwest Reply at 20-21.

⁶¹ AT&T Comments at 19-21; AT&T Reply at 18-20; MCI Reply at 3-4.

⁶² *Id.*

⁶³ Qwest Notarianni/Doherty Reply Decl., paras. 64-65. For example, posting information is available to competitive LECs in the same manner that it is available to Qwest retail. *Id.* at para. 64. Additionally, unlike competitive LECs, Qwest retail does not receive advance notices that service orders have posted to the billing system. *Id.* at para. 65.

⁶⁴ AT&T Comments at 20-21. This change has been prioritized as number 25 by the competitive LEC community for possible inclusion in IMA Release 14.0 in December 2003. Qwest Reply at 21.

⁶⁵ AT&T Comments at 20.

⁶⁶ Qwest Reply at 20; Qwest Notarianni/Doherty Reply Decl., paras. 59-61.

⁶⁷ *Id.*

11.0, Qwest republished the documentation on April 24, 2003.⁶⁸ We take further comfort from Qwest's assurance that it did include the BCN documentation in IMA Release 12.0.⁶⁹ We find that Qwest's removal of the documentation was a one-time occurrence which Qwest remedied as soon as it became aware of its mistake. Therefore, we find that the issues related to BCNs do not rise to the level of checklist noncompliance.

25. *Reject Rates.* We reject competitive LECs' allegations that Qwest's high reject rates for LSRs submitted via EDI require a finding of checklist noncompliance.⁷⁰ Specifically, AT&T expresses concern about the increase in the reject rates from December 2002 through March 2003.⁷¹ Based on the evidence before us, we conclude, however, that Qwest's reject rates do not appear to indicate systemic OSS problems. The record shows that a recalculation of those rates by removing one competitive LEC for January through March 2003 yields reject rates similar to rates found in section 271 applications previously approved by the Commission.⁷² Additionally, the record shows that one competitive LEC ordering migrate-as-specified orders (similar to the orders submitted by the competitive LEC that had high reject rates in February

⁶⁸ See Letter from Melissa Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1 (filed May 15, 2003) (Qwest May 15A *Ex Parte* Letter).

⁶⁹ Qwest Notarianni/Doherty Reply-Decl., para. 61.

⁷⁰ AT&T Reply at 18-20; MCI Reply at 1-3 (rejecting Qwest's implication that MCI was to blame for Qwest's high reject rate in January and February and stating that rejects result from Qwest's inadequate documentation); Letter from Richard E. Young, Counsel to AT&T, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 2-5 (filed Apr. 29, 2003) (AT&T April 29 *Ex Parte* Letter); Letter from Richard E. Young, Counsel to AT&T, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 2-3 (filed Apr. 30, 2003) (AT&T April 30 *Ex Parte* Letter); MCI June 13 *Ex Parte* Letter at 2. Regionwide, competitive LECs using EDI experienced high reject rates. See PO-4B-2 (LSRs Received via EDI - Auto-Rejected) showing (27%, 26.3%, 48.5%, 38.1%, and 49.2%), PO-4B-1 (LSRs Received via EDI - Manually Rejected) showing (3.8%, 4.0%, 3.3%, 3.6%, 3.2%) for November 2002 to March 2003.

⁷¹ AT&T Reply at 20; AT&T Apr. 29 *Ex Parte* Letter at 2-3.

⁷² The recalculated reject rates are 19.5%, 26%, and 38% for January, February, and March, respectively. Letter from Melissa Newman, Vice President - Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1 (filed May 22, 2003) (Qwest May 22E *Ex Parte* Letter). The high reject rate in January was caused by competitive LEC error, which that competitive LEC has since corrected. See Letter from Melissa Newman, Vice President - Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1 (filed Apr. 22, 2003) (Qwest Apr. 22A *Ex Parte* Letter). The high reject rates in February and March resulted from a different competitive LEC. Qwest May 22E *Ex Parte* Letter at 1; see Letter from Melissa Newman, Vice President - Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 3-4, Attach. D (citing confidential version) (filed May 30, 2003) (Qwest May 30C *Ex Parte* Letter); see also *Bell Atlantic New York Order*, 15 FCC Rcd at 4044, para. 175 n.552 (reporting reject rates between 27% and 34% during the relevant months of its New York section 271 application). The wide variation in competing LECs' individual reject rates suggests that the disparate reject rate may be a function of the competing carrier's experience using the BOC's system, rather than the system itself. *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd 6237, 6304-05, para. 143.

and March 2003) experienced extremely low reject rates for the relevant five-month period.⁷³ Furthermore, although we do not rely on it, we note that Qwest implemented migrate-as-specified and migrate-by-telephone number with EDI version 12.0 on April 7, 2003, which should help lower competitive LEC reject rates arising from feature and address problems.⁷⁴ If reject rates deteriorate past the recalculated levels that we rely upon in this application, we will not hesitate to take appropriate enforcement action under our section 271(d)(6) authority.⁷⁵

d. Maintenance and Repair

26. Based on the evidence in the record, we conclude that Qwest provides nondiscriminatory access to its maintenance and repair OSS functions.⁷⁶ We find that Qwest has “deployed the necessary interfaces, systems, and personnel to enable requesting carriers to access the same maintenance and repair functions” that Qwest provides to itself.⁷⁷ Below, we briefly discuss how the commercial data demonstrate that Qwest’s systems are functional and provide service to competitive LECs in a nondiscriminatory manner. We note that no commenter raises issues related to Qwest’s provision of maintenance and repair OSS functions.

27. We conclude that the commercial data demonstrate that Qwest addresses trouble complaints for competing carriers in substantially the same time and manner that it addresses complaints from its own retail customers.⁷⁸ We base our conclusion on the fact that, from November 2002 to March 2003, Qwest missed few parity performance measures.⁷⁹ Although there are minor problems with some of Qwest’s maintenance and repair quality metrics, these are

⁷³ Letter from Melissa Newman, Vice President – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at Attach. (*citing confidential version*) (filed May 14, 2003) (Qwest May 14A *Ex Parte* Letter). While the Department of Justice remarked that Qwest did not explain the high reject rates experienced by competing LECs, Qwest subsequently submitted evidence disaggregating reject rates by competitive LEC for migrate-as-specified orders. See Department of Justice Evaluation at 2 n.5; Qwest May 14A *Ex Parte* Letter at Attach.

⁷⁴ Qwest Apr. 22A *Ex Parte* Letter at 2.

⁷⁵ See n.72 *supra*.

⁷⁶ See Qwest Application at 81; Appendix B; see also Minnesota Commission Comments at 9 (explaining that the Minnesota Commission did not reach a decision regarding checklist item 2, but not citing maintenance and repair performance as an outstanding issue); *Qwest 9-State Order*, 17 FCC Rcd at 26397-98, para. 155; *Qwest 3-State Order*, para. 49.

⁷⁷ *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 211.

⁷⁸ See Qwest Application at 28-30, 69; Qwest Application, App. A, Tab 27, Declaration of Michael G. Williams (Qwest Williams Decl.), paras. 219-28, 283-89.

⁷⁹ Qwest’s overall performance in promptly clearing out-of-service orders, clearing troubles in a timely fashion, responding to customer calls on a timely basis, restoring service, and meeting repair appointments indicates that Qwest performs these functions in substantially the same time and manner for both competitive LECs and Qwest’s retail customers. See generally Appendix B.

not significant enough to detract from our conclusion that Qwest provides nondiscriminatory OSS access.

28. First, Qwest failed to achieve parity in four of the relevant months for the repair repeat report rate metric for UNE-Platform POTS.⁸⁰ According to Qwest, its misses on this metric are due, in part, to trouble reports for which no troubles were found.⁸¹ When this metric is recalculated to exclude these trouble reports, Qwest's performance improves, with misses in only two of the five relevant months.⁸² Given Qwest's nondiscriminatory maintenance and repair performance for all other types of orders and that this problem appears to be isolated to the repeat trouble metric, we find that Qwest's performance on this metric does not warrant a finding of checklist noncompliance.⁸³

29. Second, we also recognize that some of Qwest's trouble rate performance results fail to demonstrate parity.⁸⁴ Although troubles for competitive LECs were reported slightly more

⁸⁰ See MR-7 (Repair Repeat Report Rate) for UNE-P POTS (non-dispatch) showing (19.39%, 14.44%, 7.95%, 14.66%, 13.71%) for competitive LECs versus (11.12%, 8.49%, 10.04%, 8.22%, 8.96%) for Qwest retail customers for November 2002 to March 2003; see also Qwest Application at 29; Qwest Williams Decl., para. 222.

⁸¹ See Qwest Reply, App. at A-1. Qwest has developed the MR-7* PID to track this trend. See Qwest Williams Decl., para. 21. The MR-7* PID calculates the repair repeat report rate by excluding all trouble reports that were originally coded to "No Trouble Found" because no trouble was found, and which after the first report was closed, received no other trouble report within 30 days of the original report. See *id.* We note that Qwest has stated that, while the ROC TAG could not reach agreement on adopting the "*" PID approach for Qwest's modified versions of three PIDs, OP-5*, MR-7*, and MR-8*, these results are reported as additional information to help explain apparent disparities and to provide evidence that the apparent disparities are not due to discrimination. See *id.* at para. 23. As in previous Qwest section 271 orders, we find it appropriate to consider the adjusted results from the modified PIDs as part of Qwest's performance data. See, e.g., *Qwest 9-State Order*, 17 FCC Rcd at 26489-90, para. 341; *Qwest 3-State Order*, para. 47.

⁸² See MR-7* (Repair Repeat Report Rate) for UNE-P POTS (non-dispatch) showing (17.91%, 16.95%, 8.20%, 17.11%, 9.64%) for competitive LECs versus (11.99%, 9.11%, 10.86%, 9.73%, 9.78%) for Qwest retail customers for November 2002 to March 2003.

⁸³ We note that Qwest also argues that this metric has been adversely affected by switch feature incompatibility problems. It is reviewing the causes of this problem and commits to resolve this incompatibility issue. See Qwest Reply, App. at A-1 (explaining that the combination of Hunting and Call Forwarding features is incompatible with Qwest's DMS-100 switches and that Qwest is using a manual provisioning process to address this incompatibility issue).

⁸⁴ See MR-8 (Trouble Rate) for UNE-P Centrex showing (0.49%, 0.52%, 0.44%, 0.47%, 0.42%) for competitive LECs versus (0.13%, 0.08%, 0.11%, 0.10%, 0.11%) for Qwest retail customers; MR-8 (Trouble Rate) for Centrex showing (0.64%, 0.87%, 0.58%, 0.84%, 0.22%) for competitive LECs versus (0.13%, 0.08%, 0.11%, 0.10%, 0.11%) for Qwest retail customers; MR-8 (Trouble Rate) for Centrex 21 showing (0.73%, 0.62%, 0.64%, 0.82%, 1.12%) for competitive LECs versus (0.40%, 0.43%, 0.40%, 0.48%, 0.47%) for Qwest retail customers; MR-8 (Trouble Rate) for PBX showing (0.15%, 0.13%, 0.22%, 0.20%, 0.17%) for competitive LECs versus (0.14%, 0.12%, 0.10%, 0.13%, 0.11%) for Qwest retail customers; MR-8 (Trouble Rate) for Basic Rate ISDN showing (0.64%, 0.13%, 0.74%, 0.86%, 1.31%) for competitive LECs versus (0.30%, 0.25%, 0.28%, 0.28%, 0.37%) for Qwest retail customers; MR-8 (Trouble Rate) for ISDN Primary showing (0.10%, 0.00%, 0.09%, 0.35%, 0.12%) for competitive LECs versus (0.03%, 0.04%, 0.02%, 0.03%, 0.03%) for Qwest retail customers; MR-8 (Trouble Rate) (continued....)

often than for Qwest's retail customers for these services, we find that these disparities are not competitively significant given the low competitive LEC trouble rates.⁸⁵

e. Billing

30. Based on the evidence in the record, we find that Qwest provides nondiscriminatory access to its billing functions.⁸⁶ We find that Qwest complies with its obligation to provide complete, accurate, and timely service usage records and wholesale bills. Additionally, we find that Qwest's performance on the relevant measurements satisfies the parity or benchmark standards, with few exceptions.⁸⁷ The Commission has established in past section 271 orders that, as part of its OSS showing, a BOC must demonstrate that competing carriers have nondiscriminatory access to its billing systems.⁸⁸ In particular, BOCs must provide two essential billing functions: (1) complete, accurate, and timely reports on the service usage of competing carriers' customers; and (2) complete, accurate, and timely wholesale bills.⁸⁹ Service usage reports and wholesale bills are issued by incumbent LECs to competitive LECs for two different purposes.⁹⁰ Service-usage reports are issued to competitive LECs that purchase UNEs, such as unbundled switching, and measure the types and amounts of incumbent LEC services used by a competitive LEC's end users.⁹¹ Qwest, using the same process that it uses for its own

(Continued from previous page) _____
for DSIs showing (1.65%, 1.84%, 2.74%, 2.61%, 2.23%) for competitive LECs versus (1.22%, 1.25%, 1.30%, 1.34%, 1.32%) for Qwest retail customers for November 2002 to March 2003.

⁸⁵ The five-month averages for the competitive LEC trouble rates were 0.47% (UNE-P Centrex), 0.64% (Centrex), 0.76% (Centrex 21), 0.17% (PBX), 0.72% (Basic Rate ISDN), 0.14% (ISDN Primary), and 2.22% (DS1). All relevant months and the five-month average for each metric are below 3%, which the Commission has found to be acceptable in past section 271 orders. See, e.g., *Qwest 9-State Order*, 17 FCC Rcd at 26488, para. 340 n.1237; *Verizon Maine Order*, 17 FCC Rcd at 11691, para. 49 n.209.

⁸⁶ *Qwest Notarianni/Doherty Decl.*, paras. 421-548; *Qwest Application* at 81-84; *Qwest Reply* at 13-22; see also Department of Justice Evaluation at 8 (finding that concerns regarding Qwest's billing processes reflect private disputes between parties, one-time errors, or *de minimis* misses). But see Minnesota Commission Comments at 9 (stating that the Minnesota Commission did not reach a collective decision regarding checklist item 2 because of concerns regarding billing accuracy).

⁸⁷ In Minnesota, competitive LECs' billing accuracy under BI-3A (Adjustments for Errors, UNEs and Resale) is 98.06% versus 99.30% for Qwest retail, on average, from November 2002 through March 2003. We do not find this discrepancy to be competitively significant. See Minnesota Commission Comments, Attach. 3 at 32. Because of this mismatch between the month the credit occurred and the month that is being billed, we have previously relied on other billing metrics, if available. See *Qwest 9-State Order*, 17 FCC Rcd at 26382, para. 126 nn.470-71. We note that Qwest achieved parity under BI-5A and BI-5B – billing metrics which were adopted subsequent to the *Qwest 9-State Order* and which are patterned after the performance metrics adopted by Verizon subsequent to the billing problems noted in our *Verizon Pennsylvania Order*. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17432-17436, paras. 24-27 (2001).

⁸⁸ See *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

⁸⁹ See *id.*

⁹⁰ See *Qwest 9-State Order*, 17 FCC Rcd at 26374, para. 115.

⁹¹ See *id.*

end users, collects competitive LEC end-user usage data via the Daily Usage File (DUF).⁹² In contrast, wholesale bills are issued by incumbent LECs to collect compensation for competitive LEC wholesale inputs, such as UNEs used by competitive LECs to provide service to their end users.⁹³ These bills are usually generated on a monthly basis, and allow competitors to monitor the costs of providing service.⁹⁴

31. *Daily Usage Files.* Based on the evidence in the record, we find that Qwest complies with the checklist item 2 standards for provision of DUF.⁹⁵ Our conclusion is based on commercial data as well as BearingPoint's third-party audit of Qwest's billing systems, processes and performance. Notably, BearingPoint concluded that Qwest can create and distribute bills to competitive LECs in an accurate and timely fashion.⁹⁶

32. Although we recognize that two of the four Minnesota Commissioners expressed concern about Qwest's ability to provide accurate DUF records, the Minnesota ALJ's findings, upon which the two Commissioners based their conclusions, are based on evidence concerning a manual process for providing usage information for UNE-Star, which Qwest no longer uses.⁹⁷ Qwest established, beginning in mid-2001, the same mechanized process for providing usage information for UNE-Star and UNE-Platform.⁹⁸ Furthermore, as the Commission found in the *Qwest 9-State Order*, these concerns regarding UNE-Star DUF issues "appear to be disputes between the parties, and more appropriate for the interconnection dispute resolution process."⁹⁹ As there is no recent commercial evidence of deficiencies in Qwest's DUF, we do not find that the concerns regarding Qwest's DUF rise to the level of checklist noncompliance.¹⁰⁰

33. *Wholesale Bills.* We find that Qwest's Customer Record and Information System (CRIS) wholesale bills provide competitive LECs a meaningful opportunity to compete. Commenters raise the following arguments, which are discussed below, regarding Qwest's wholesale bills: (1) Qwest's Billing Output Specification-Billing Data Tape (BOS-BDT) bills are inaccurate; (2) Qwest's paper bills are inaccurate; (3) Qwest does not properly provide

⁹² See *id.*, 17 FCC Rcd at 26375, para. 116.

⁹³ See *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

⁹⁴ See *id.*

⁹⁵ Qwest Notarianni/Doherty Decl., paras. 498-511.

⁹⁶ See *Qwest 9-State Order*, 17 FCC Rcd at 26384, para. 131.

⁹⁷ Qwest Notarianni/Doherty Decl., para. 509; Qwest Reply at 13, 16.

⁹⁸ Qwest Notarianni/Doherty Decl., para. 509.

⁹⁹ See *Qwest 9-State Order*, 17 FCC Rcd at 26383-84, para. 130 n.481.

¹⁰⁰ We also reject competitive LECs' generalized claims that Qwest provides incorrect DUF records. MCI Comments at 3; AT&T Reply at 26. We note that we addressed these specific complaints from MCI concerning DUF information in the *Qwest 3-State Order*, para. 51 n.161.

information needed in order for competitive LECs to bill Qwest for terminating access charges; and (4) the billing adjustment performance metric is not reliable as a result of Qwest's UNE-Star billing adjustments.¹⁰¹

34. First, we reject AT&T's argument that inaccuracies in Qwest's BOS-BDT bills rise to the level of checklist noncompliance.¹⁰² Qwest produces two types of electronic bills, ASCII bills and BOS-BDT bills.¹⁰³ As we found in the *Qwest 9-State Order*, Qwest's ASCII bill is an accurate, auditable electronic bill.¹⁰⁴ We do not need to find that other types of electronic bills provided by Qwest are accurate and auditable for Qwest to be checklist compliant. In the *Qwest 9-State Order*, we commended Qwest for making available a BOS-formatted bill, but we did not rely on Qwest's provision of the BOS-formatted bill to support our finding that Qwest provides accurate and auditable electronic bills.¹⁰⁵ Thus, we do not find that AT&T's allegations about discrepancies between Qwest's BOS-BDT bills and Qwest's paper bills rise to the level of checklist noncompliance.¹⁰⁶

35. Second, we do not find that AT&T's allegations regarding inaccuracies in Qwest's paper bills rise to the level of checklist noncompliance.¹⁰⁷ The record shows that the improper pay-per-use charges about which AT&T complains amounted to 1 percent or less of AT&T's bill each month.¹⁰⁸ The record also shows that Qwest has removed the improper \$.49 service line charge from AT&T's paper bill and has taken measures to ensure this type of charge

¹⁰¹ Minnesota Commission Comments at 9 (citing Qwest Application App. K, Vol. 3, Tab 317, paras. 310-24) (*Minnesota ALJ Recommendation on Checklist Items*); AT&T Comments at 22-24; AT&T Reply at 26.

¹⁰² AT&T Comments at 23; see also AT&T Apr. 29 *Ex Parte* Letter at 1-2; Qwest Notarianni/Doherty Reply Decl., paras. 73-97.

¹⁰³ Qwest Notarianni/Doherty Decl., paras. 426-47.

¹⁰⁴ See *Qwest 9-State Order*, 17 FCC Rcd at 26379-81, para. 124; see also Qwest Reply at 21-22.

¹⁰⁵ See *Qwest 9-State Order*, 17 FCC Rcd at 26381, para. 125.

¹⁰⁶ AT&T Comments at 23-24; see also AT&T April 29 *Ex Parte* Letter at 1-2; Qwest Notarianni/Doherty Reply Decl., para 77 (stating that every electronic BOS bill generated by Qwest for AT&T since November 2002 has matched the paper bill at the summary level for total amount owed). We note that Qwest is working to improve its BOS-BDT bill. Qwest Reply at 21. Qwest has made significant improvements to its BOS-BDT bill since its introduction in July 2002, including a fix to remove the disparity between the BOS-BDT bill and Qwest's paper bill if billing adjustments were made after the final bill had been generated, and correction of a usage rounding error. Qwest Notarianni/Doherty Reply Decl., paras. 74-87. Furthermore, we do not require that Qwest's BOS-BDT bill be generated from the Carrier Access Billing System (CABS) rather than from the Customer Record Information System (CRIS), which Qwest currently uses to generate BOS-BDT bills. See AT&T Finnegan Decl., para. 10 n.10.

¹⁰⁷ AT&T Comments at 23-24.

¹⁰⁸ Qwest Notarianni/Doherty Reply Decl., para. 100.

does not improperly appear on competitive LECs' bills.¹⁰⁹ Therefore, we do not find the issues raised by AT&T about Qwest's paper bills to be competitively significant.

36. Third, we reject AT&T's argument that Qwest fails to provide competitive LECs with information needed in order for competitive LECs to bill Qwest for terminating access charges when a Qwest customer's intraLATA toll call terminates to a competitive LEC's local exchange customer served by a competitive LEC's switch.¹¹⁰ Where AT&T terminates calls at one of its own switches, AT&T can obtain usage information from either its own switch or from the out-of-office band signaling stream.¹¹¹ The record shows that for AT&T UNE-Platform customers, where AT&T would not have access to the information in the switch where the call was terminated, Qwest provides the information AT&T needs to bill Qwest for terminating access.¹¹² Since Qwest provides the necessary information to competitive LECs, we do not find that AT&T's complaints rise to the level of checklist noncompliance.

37. Finally, we conclude that the concerns raised in the Minnesota ALJ's recommendation about the billing adjustment performance metric – upon which two of the four voting members of the Minnesota Commission relied – are misplaced.¹¹³ Specifically, the Minnesota ALJ argues that the billing adjustment performance metric was “manipulated” as a result of refunds given via bill adjustments to those competitive LECs using UNE-Star and is, therefore, ineffective at demonstrating whether Qwest is providing accurate bills to competitive LECs for UNE-Platform.¹¹⁴

38. We note that the Minnesota ALJ's finding was based on a factual situation that no longer existed at the time this application was filed. We find that the volume of UNE-Star orders has declined significantly and that performance metrics pertaining to our relevant 5-month period mainly reflect UNE-Platform orders.¹¹⁵ Moreover, this issue does not appear to be an issue of billing accuracy. Instead, the ALJ's concerns focused on Qwest's provision of refunds

¹⁰⁹ *Id.* at para. 81.

¹¹⁰ AT&T Comments at 23; AT&T Reply at 25-26.

¹¹¹ Qwest Notarianni/Doherty Reply Decl., para. 70.

¹¹² *Id.* at para. 71.

¹¹³ *Minnesota ALJ Recommendation on Checklist Items*, para. 320. We note that two out of the four voting Minnesota Commissioners adopted the Minnesota ALJ's recommendation that these billing concerns prevent a finding of compliance with checklist item 2.

¹¹⁴ *Minnesota ALJ Recommendation on Checklist Items*, para. 320. UNE-Platform, priced at the sum of prices of the network elements, is priced lower than resale in Minnesota. *Id.* at paras. 89-100. Qwest offered the two largest competitive LECs in Minnesota, Eschelon and McLeod, an alternative to UNE-Platform called UNE-Star. *Id.* UNE-Star was ordered by those competitive LECs as resale, billed as resale, and Qwest would make subsequent end-of-month adjustments to ensure the price of UNE-Star reflected the lower UNE-Platform price. *Id.*

¹¹⁵ Qwest Notarianni/Doherty Reply Decl., Ex. CLD-3.

given only to certain competitive LECs using UNE-Star through unfiled agreements.¹¹⁶ As to UNE-Star, the evidence in the record indicates that the billing adjustments at issue were an agreed-upon mechanism to provide a true-up, and those adjustments do not reflect a problem with billing accuracy as we have examined it in past applications. The issue of unfiled agreements is discussed fully in the Public Interest section, below.¹¹⁷ Thus, we find that the concerns raised by the Minnesota ALJ do not rise to the level of checklist noncompliance.

f. Change Management

39. Based on the evidence in the record, we conclude that Qwest provides an efficient competitor a meaningful opportunity to compete by providing sufficient access to its OSS.¹¹⁸ We reject competitive LEC arguments that Qwest provides such poor documentation to competitors about its systems that it must fail checklist item 2.¹¹⁹ Commenters have not raised any arguments relating to documentation that we have not fully addressed in the *Qwest 9-State Order* and the *Qwest 3-State Order*.¹²⁰ Thus, we find no reason to alter our conclusion in the instant application.¹²¹

¹¹⁶ Qwest Reply at 14-16.

¹¹⁷ See Section VII.B. (Unfiled Interconnection Agreements) *infra*.

¹¹⁸ See Qwest Application at 25-31. See generally Qwest Notarianni/Doherty Decl.

¹¹⁹ MCI Comments at 3; AT&T Finnegan Decl., para. 8; AT&T Reply at 17.

¹²⁰ AT&T Finnegan Decl., para. 8 (stating that the test environment offered by Qwest differs significantly from its production environment); MCI Reply at 2 (stating that high reject rates are the result of Qwest's inadequate documentation); MCI June 13 *Ex Parte* Letter at 1-2; see *Qwest 3-State Order*, paras. 55-62; *Qwest 9-State Order*, 17 FCC Rcd at 26388-89, para. 139 (finding that Qwest's Stand Alone Test Environment (SATE) is designed to ensure that competitive LECs' EDI interfaces can communicate with Qwest's systems regarding key functionalities and allow real-world orders to be tested); see also Qwest Notarianni/Doherty Reply Decl., para. 7. Additionally, AT&T states that Qwest has not implemented more than 20 of AT&T's change requests (CRs), encompassing various OSS functions from pre-ordering through billing. AT&T Finnegan Decl., para. 10. The record shows that in processing AT&T's change requests, Qwest has followed the change management process designed collaboratively by competitive LECs (including AT&T) and Qwest. Qwest Reply at 10. Specifically, the record shows that Qwest has not delayed in processing AT&T's CRs or implementing those that have been approved. Qwest Reply at 10. Many of the pending AT&T CRs were submitted after January 1, 2003 – including each of the CRs specifically mentioned by AT&T. Qwest Reply at 10-11; see AT&T Finnegan Decl., para. 10 & nn.8-10; Letter from Melissa Newman, Vice President – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1 (filed May 16, 2003) (Qwest May 16B *Ex Parte* Letter).

¹²¹ See *Qwest 3-State Order*, paras. 55-58.

2. UNE Combinations

40. Based on the evidence in the record, we conclude that Qwest meets its obligation to provide access to UNE combinations in compliance with Commission rules.¹²² In order to satisfy section 271(c)(2)(B)(ii), a BOC must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already combined elements, except at the specific request of the competing carrier.¹²³ Although Qwest missed the benchmark for EELs installation commitments,¹²⁴ we find that the performance disparities do not warrant a finding of checklist noncompliance, given the comparatively low volumes and the lack of complaints by competitors regarding EELs provisioning.¹²⁵ Recognizing the difficulty of drawing meaningful conclusions from relatively low volumes,¹²⁶ we note that in Colorado where Qwest experienced significantly higher volumes of competitive LEC orders for EELs,¹²⁷ it performed at or near the benchmark during the relevant months for this metric.¹²⁸

¹²² See Qwest Application at 27-31; Appendix B; see also Minnesota Commission Comments at 9 (explaining that the Minnesota Commission did not reach a decision regarding checklist item 2, but not citing EELs as an outstanding issue). Issues raised by the Minnesota Commission regarding UNE-Platform orders are discussed in Section III.A.1.e (Billing) *supra*.

¹²³ 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.315. On May 13, 2002, the U.S. Supreme Court upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain limitations, require incumbent LECs to provide combinations of unbundled network elements "not ordinarily combined in the incumbent LEC's network" and to "combine unbundled network elements with the elements possessed by the requesting telecommunications carrier." *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 539 (2002). In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require an incumbent LEC not to separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 393-95 (1999). We note that other unbundled network elements are required pursuant to the checklist, but we discuss them in the context of other checklist items.

¹²⁴ See OP-3 (Installation Commitments Met) for EELs in Minnesota, indicating missed benchmarks in December, January, February, and March. In these months, the rates of installation commitments met for competitive LECs were 79.41%, 85.00%, 85.71%, and 70.21%, compared to the 90% benchmark. The competitive LEC volumes in these months were 34, 40, 56, and 47. See *id.*

¹²⁵ See Qwest Application at 30-31; Qwest Williams Decl., para. 230 (explaining that this metric is particularly sensitive to a small number of misses due to the low volumes ordered); Qwest Reply, App. at A-4; see also *Qwest 9-State Order*, 17 FCC Rcd at 26401, para. 162.

¹²⁶ See, e.g., *Qwest 9-State Order*, 17 FCC Rcd at 26401, para. 162 n.608.

¹²⁷ Volumes for OP-3 (Installation Commitments Met) for EELs in Colorado were (236, 210, 206, 207, 198) for November 2002 to March 2003. See Letter from Melissa E. Newman, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed Apr. 30, 2003) at Attach. 1 (containing November 2002 - March 2003 Statewide Performance Summary for Colorado).

¹²⁸ Qwest missed the benchmarks for OP-3 (Installation Commitments Met) for EELs in Colorado in November and January. In these months, the rates of installation commitments met for competitive LECs were 88.14% and 89.81%, compared to the 90% benchmark. See *id.*

3. Pricing of Unbundled Network Elements

a. Introduction

41. Checklist item 2 of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act.¹²⁹ Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”¹³⁰ Section 252(d)(1) provides that a state commission’s determination of the just and reasonable rates for network elements, must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.¹³¹ Pursuant to this statutory mandate, the Commission has determined that prices for unbundled network elements must be based on the total element long run incremental cost (TELRIC) of providing those elements.¹³²

42. In applying the Commission’s TELRIC pricing principles in this application, we do not conduct a *de novo* review of a state’s pricing determinations.¹³³ We will, however, reject an application if “basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.”¹³⁴ We note that different states may reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here.

43. In its application, Qwest relies on a benchmark comparison to its unbundled network element rates in Colorado in order to demonstrate that its unbundled network element rates in Minnesota fall within the range that a reasonable application of TELRIC principles would produce.¹³⁵ Based on a benchmark comparison of Qwest’s unbundled network element

¹²⁹ 47 U.S.C. § 271(c)(2)(B)(ii).

¹³⁰ 47 U.S.C. § 251(c)(3).

¹³¹ 47 U.S.C. § 252(d)(1).

¹³² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501-51.515 (2001). Last year, the Supreme Court upheld the Commission’s forward-looking pricing methodology in determining the costs of unbundled network elements. *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646, 1679 (2002).

¹³³ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted). See also *Sprint v. FCC*, 274 F.3d 549, 556 (D.C. Cir. 2001) (“When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.”).

¹³⁴ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted).

¹³⁵ Qwest Application at 100-101; Qwest Thompson Decl., paras. 2, 14-20.

rates in Minnesota to its unbundled network element rates in Colorado, we find, as discussed more fully below, that Qwest's unbundled network element rates in Minnesota fall within the range that a reasonable application of TELRIC principles would produce and therefore satisfy checklist item two.

b. Background

44. *Arbitration and Generic Cost Docket.* Prices for unbundled network elements were first established by the Minnesota Commission on December 2, 1996, in an order approving the first arbitrated interconnection agreement between AT&T and Qwest in Minnesota.¹³⁶ In that order, the Minnesota Commission initiated a generic cost docket to establish prices for interconnection and unbundled network elements.¹³⁷ On November 17, 1998, the ALJ issued a report in the generic cost docket recommending adoption of the HAI model, with modifications to engineering and expense inputs, to establish prices for unbundled network elements.¹³⁸ The Minnesota Commission adopted the ALJ's recommendations on May 3, 1999.¹³⁹ On March 15, 2000, the Minnesota Commission issued an order on reconsideration establishing additional rates not addressed in the prior order, and directing Qwest to make a compliance filing within 30 days to set the resulting rates.¹⁴⁰

45. *Deaveraging and Line Sharing Dockets.* The Minnesota Commission examined the issues of geographic rate deaveraging and line sharing in separate dockets. The Minnesota Commission issued an order deaveraging loop rates into four geographic zones on July 10, 2000,

¹³⁶ See generally Qwest Application, App. C, Vol. 2, Tab 2, Docket Nos. P-422, 421/M-96-855; P-5321, 421/M-96-909; P-3167, 421/M-96-729; P-421/CI-01-1375 – *In the Matter of Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc. and MFS Communications Company for Arbitration with US West Communications, Inc Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, Order Resolving Arbitration Issues and Initiating a US West Cost Proceeding* (rel. Dec. 2, 1996) (*December 2, 1996 Arbitration Order*). The Minnesota Commission consolidated the interconnection arbitration proceedings between Qwest and each of AT&T, MCImetro and MFS into one proceeding.

¹³⁷ See *id.* at 60, 78.

¹³⁸ Qwest Application, App. C, Vol. 2, Tab 6, Docket No. P-442, 5231, 3167, 466, 421/CI-96-1540 – *In the Matter of a Generic Investigation of US West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements*, ALJ Report (rel. Nov. 17, 1998) (*ALJ Generic Cost Docket Report*). See also Qwest Application, App. C, Vol. 2, Tab 23, Docket Nos. P-421/CI-01-1375 – *In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element (UNE) Prices*, ALJ Findings of Fact, Conclusions of Law, and Recommendation at 6 (rel. Aug. 5, 2002) (*ALJ Long-Term Rate Recommendation*).

¹³⁹ Qwest Application, App. C, Vol. 2, Tab 8, Docket No. P-442, 5231, 3167, 466, 421/CI-96-1540 – *In the Matter of a Generic Investigation of US West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements*, Order Resolving Cost Methodology, requiring Compliance Filing, and Initiating Deaveraging Proceeding (rel. May 3, 1999) (*Generic Cost Docket Order*).

¹⁴⁰ Qwest Application, App. C, Vol. 2, Tab 9, Docket No. P-442, 5231, 3167, 466, 421/CI-96-1540 – *In the Matter of a Generic Investigation of US West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements*, Order Granting Reconsideration, Setting Prices and Ordering Compliance Filing (rel. Mar. 15, 2000) (*Generic Cost Docket Order on Reconsideration*).

and affirmed this order on reconsideration on October 5, 2000.¹⁴¹ The Minnesota Commission's line sharing proceeding culminated in the issuance of an order on July 24, 2001, which established a zero rate for the high-frequency portion of the loop and positive rates for related elements.¹⁴²

46. *Section 271 Cost Docket.* On September 11, 2001, the Minnesota Commission initiated proceedings relating to Qwest's application for section 271 approval with this Commission. The proceeding was divided into several specialized dockets, including a cost docket established to develop prices for new unbundled network elements in accordance with TELRIC principles.¹⁴³ Independent of this docket, on December 21, 2001, AT&T and WorldCom filed a complaint with the Minnesota Commission seeking adjustment of Qwest's rates for certain unbundled network elements, particularly those elements that comprise the UNE-Platform.¹⁴⁴ Subsequently, this complaint proceeding and the issues raised therein were consolidated with the section 271 cost docket.¹⁴⁵ On April 4, 2002, the Minnesota Commission issued an order declaring all rates under review in the section 271 cost docket interim subject to true-up.¹⁴⁶ On August 5, 2002, after months of pre-filed testimony, hearings and briefs, including significant participation by competitive LECs in Minnesota, the ALJ issued its recommendation concerning long-term rates.¹⁴⁷ The ALJ recommended adoption of the HAI cost model 5.2a to establish recurring rates, the loop related inputs favored by the competitive LECs, non-usage sensitive rates for local switching, as urged by AT&T, and the switching and transport assumptions proposed by competitive LECs.¹⁴⁸ For non-recurring charges, the ALJ recommended adoption of the non-recurring cost model proposed by Qwest, with certain

¹⁴¹ See Qwest Thompson Decl., para. 5. See also Qwest Application, App. C, Vol. 2, Tab 10, Docket No. P-999/CI-99-465 – *In the Matter of Implementing the Geographic Deaveraging Requirements of 47 C.F.R. § 51.507(f)*, Order Deaveraging Unbundled Network Element Rates (rel. July 10, 2000) (*Deaveraging Order*); See also Qwest Application, App. C, Vol. 2, Tab 12, Docket No. P-999/CI-99-465 – *In the Matter of Implementing the Geographic Deaveraging Requirements of 47 C.F.R. § 51.507(f)*, Order on Reconsideration (rel. Oct. 5, 2000) (*Deaveraging Order on Reconsideration*).

¹⁴² See Qwest Thompson Decl., para. 5.

¹⁴³ See Qwest Application, App. C, Vol. 2, Tab 25, Docket Nos. P-421/CI-01-1375 and P-442, 421, 3012/M-01-1916 – *In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element Prices and the Commission's Review and Investigation of Certain Unbundled Network Element Prices of Qwest*, Order Setting Prices and Establishing Procedural Schedule at 1 (rel. Oct. 2, 2002) (*Long-Term Rate Order*).

¹⁴⁴ See *id.*

¹⁴⁵ See *id.* at 1-2.

¹⁴⁶ Qwest Application, App. C, Vol. 2, Tab 20, Docket Nos. P-421/CI-01-1375 and P-442, 421, 3012/M-01-1916 – *In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element Prices and the Commission's Review and Investigation of Certain Unbundled Network Element Prices of Qwest*, Order Establishing Interim Rates (rel. Apr. 4, 2002) (*Interim Rate Order*).

¹⁴⁷ See *Long-Term Rate Order* at 2. See also ALJ Long-Term Rate Recommendation.

¹⁴⁸ See ALJ Long-Term Rate Recommendation at 8-37. See also Qwest Thompson Decl., paras. 7-9.

adjustments.¹⁴⁹ For collocation rates, the ALJ recommended adoption of the collocation model proposed by AT&T and MCI in the prior generic cost proceeding and adopted by the Minnesota Commission in that proceeding.¹⁵⁰ For certain new collocation elements, however, the ALJ recommended adoption of Qwest's proposed collocation model, with certain adjustments, because it was the only model under consideration that estimated costs for these elements.¹⁵¹ The Minnesota Commission adopted the ALJ's recommendations, with minor modifications, on October 2, 2002,¹⁵² and denied reconsideration of this order on November 26, 2002.¹⁵³ Qwest submitted an SGAT in compliance with the Minnesota Commission's long-term rate order on February 18, 2002. On March 24, 2003, the Minnesota Commission issued an order accepting Qwest's compliance filing and establishing, as a final matter, the rates Qwest may charge competitive LECs for unbundled network elements at issue in the section 271 cost proceeding.¹⁵⁴ On April 23, 2003, Qwest filed an appeal of the Minnesota Commission's March 24, 2003 order in federal district court in Minnesota. That proceeding remains pending.¹⁵⁵

c. Benchmark Analysis

47. In its application, Qwest relies on a benchmark comparison to its unbundled network element rates in Colorado in order to demonstrate that its unbundled network element rates in Minnesota fall within the range that a reasonable application of TELRIC principles would produce.¹⁵⁶ None of the parties has challenged Qwest's benchmark analysis for Minnesota, including its decision to use Colorado rates as the basis for the comparison. Nonetheless, we perform our own benchmark analysis of Qwest's Minnesota unbundled network element rates to determine whether those rates comply with TELRIC and satisfy checklist item two. To determine whether a comparison is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the

¹⁴⁹ See *ALJ Long-Term Rate Recommendation* at 42-49. See also Qwest Thompson Decl., para. 11.

¹⁵⁰ See *ALJ Long-Term Rate Recommendation* at 49-57. See also Qwest Thompson Decl., para. 12.

¹⁵¹ See *id.* Qwest was the only party in the section 271 cost docket to propose a collocation cost model. See *ALJ Long-Term Rate Recommendation* at 51.

¹⁵² See *Long-Term Rate Order*. Most notably, the Minnesota Commission adopted the HAI 5.2a "default backbone and branch" loop distribution methodology instead of the "right-angled Minimum Spanning Tree" approach recommended by the ALJ. See *id.* at 6-8. The Minnesota Commission also declined to adopt the price for cageless collocation recommended by the ALJ and instead adopted a price of \$0. See *id.* at 8-9.

¹⁵³ See Minnesota Commission Comments at 5.

¹⁵⁴ See *id.* See also Minnesota Commission Reply, Supplemental Appendix B at 11.

¹⁵⁵ See Minnesota Commission Reply at 2-3 & Supplemental Appendix B.

¹⁵⁶ See Qwest Application at 100-101; Qwest Thompson Decl., paras. 2, 14-20.

comparison state to be TELRIC-compliant or an appropriate benchmark.¹⁵⁷ Applying this standard to Qwest's rates in Minnesota, we find that Colorado is a permissible state for unbundled network element rate comparison purposes here.¹⁵⁸

48. Having determined that the Colorado rates are appropriate rates for the benchmark comparison, we compare Qwest's Minnesota rates to the Colorado rates under our benchmark analysis, using our standard assumptions for weighting rates.¹⁵⁹ We compare the difference between the rates in Minnesota and the rates in Colorado to the difference between the costs in Minnesota and the costs in Colorado according to the Synthesis Model.¹⁶⁰ We compare rates and costs for loops and for aggregated non-loop elements.¹⁶¹ Taking a weighted average of Qwest's loop rates in Minnesota and Colorado, we find that Qwest's Minnesota loop rates satisfy our benchmark analysis and the requirements of checklist item 2.¹⁶² We also conduct a benchmark analysis of Qwest's Minnesota non-loop rates. We compare Qwest's Minnesota non-loop rates to the Colorado non-loop rates using our benchmark analysis and find that Qwest's Minnesota non-loop rates satisfy our benchmark analysis.¹⁶³ Thus, we find that Qwest has

¹⁵⁷ See *Verizon New Jersey Order*, 17 FCC Rcd at 12295-96, para. 49; *Application by Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Rcd 3300, 3320, para. 38 (2002) (*Verizon Rhode Island Order*); *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, 16 FCC Rcd 20719, 20746, para. 56 (2001) (*SWBT Arkansas/Missouri Order*); *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 63. In the *Verizon Pennsylvania Order*, the Commission found that several of the criteria should be treated as indicia of the reasonableness of the comparison. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64; see also *Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

¹⁵⁸ Colorado shares geographic similarities, is served by the same BOC, has a similar rate structure, and the Commission has already found Colorado's rates to be TELRIC-compliant on their own merits. See *Qwest 9-State Order*, 17 FCC Rcd at 26467-69, paras. 302, 305.

¹⁵⁹ See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 65 (describing our standard assumptions).

¹⁶⁰ The Commission "cannot rely on the [synthesis] model to provide guidance in examining non-recurring rates, because it does not examine these costs." *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457 n.248.

¹⁶¹ We note that although the Commission only benchmarks non-loop elements in the aggregate, Qwest's Minnesota rates for switching and transport would independently satisfy a benchmark test.

¹⁶² Qwest's Minnesota loop rates are 19% lower than Colorado loop rates. Comparing the weighted average costs per the Synthesis Model, we find that the Minnesota loop costs are 6% lower than the Colorado loop costs. Because the percentage by which Minnesota loop rates fall below Colorado loop rates exceeds the percentage by which Minnesota loop costs fall below Colorado loop costs per the Synthesis Model, we conclude that Qwest's Minnesota loop rates satisfy our benchmark analysis.

¹⁶³ Qwest's Minnesota non-loop rates are 40% lower than Colorado non-loop rates. Comparing the weighted average costs per the Synthesis Model, we find that Qwest's Minnesota non-loop costs are 10% lower than Qwest's (continued....)

demonstrated that its Minnesota unbundled network element rates satisfy the requirements of checklist item two.

d. Appeal of the Minnesota Commission's Rate Order

49. As noted above, on April 23, 2003, Qwest filed an appeal in federal district court in Minnesota of the Minnesota Commission's March 24, 2003 order accepting Qwest's compliance filing and establishing, as a final matter, the rates Qwest may charge competitive LECs for unbundled network elements at issue in the section 271 cost proceeding. In its reply comments, AT&T criticizes Qwest for seeking section 271 approval based on the unbundled network element rates adopted by the Minnesota Commission, while simultaneously appealing those rates and seeking much higher unbundled network element rates.¹⁶⁴ In this case, we do not believe that the existence of a pending appeal, without more, should affect our review of the currently effective rates submitted with Qwest's application. The Commission decides the merits of Qwest's section 271 application based on its present rates.¹⁶⁵ Qwest is not seeking a stay of its present rates during the period that its appeal is pending in federal district court.¹⁶⁶ Further, Qwest has committed that, to the extent it is successful on appeal, it will not seek additional, retroactive payments from competitive LECs for interconnection services provided by Qwest during the period from March 24, 2003 to the date of the federal court's decision.¹⁶⁷ This clarifies that the rates currently before the Commission in this application will not be retroactively replaced by higher rates that have not been subject to analysis and comment in this section 271 proceeding.¹⁶⁸ Under these circumstances, we conclude that Qwest's pending appeal before the federal district court in Minnesota does not preclude us from finding that Qwest satisfies checklist item 2.

(Continued from previous page)

Colorado non-loop costs. Because the percentage by which Minnesota non-loop rates fall below Colorado non-loop rates exceeds the percentage by which Minnesota non-loop costs fall below Colorado non-loop costs per the Synthesis Model, we conclude that Qwest's Minnesota non-loop rates satisfy our benchmark analysis.

¹⁶⁴ See AT&T Reply at 10 n.17. See also Minnesota Commission Reply at 2-3 (noting that Qwest's appeal of the Minnesota Commission's rate order is currently pending in federal district court in Minnesota).

¹⁶⁵ See *In the Matter of Joint Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9067, paras. 97-98 (2002) (*BellSouth Georgia/Louisiana Order*).

¹⁶⁶ See Letter from Melissa E. Newman, Vice President-Federal Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 03-90 at 1 (filed May 21, 2003) (Qwest May 21A *Ex Parte* Letter).

¹⁶⁷ See *id.*

¹⁶⁸ Moreover, as we have pointed out in the past, to the extent prices in the future are not set in accordance with our rules and the Act, as a result of Qwest's appeal in federal district court or otherwise, we retain the ability going forward to take appropriate enforcement action, including action pursuant to section 271(d)(6). See *Verizon Massachusetts Order*, 16 FCC Rcd at 9003, para. 30; 47 U.S.C. § 271(d)(6).

IV. OTHER ITEMS

A. Checklist Item 1 – Interconnection

50. Section 271(c)(2)(B)(i) requires a BOC to provide equal-in-quality interconnection on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of sections 251 and 252.¹⁶⁹ Based on the evidence in the record, we conclude, as did the Minnesota Commission,¹⁷⁰ that Qwest complies with the requirements of this checklist item.¹⁷¹ In reaching this conclusion, we have examined Qwest's performance in providing collocation and interconnection trunks to competing carriers, as we have done in prior section 271 proceedings.¹⁷²

51. We disagree with AT&T's argument that Qwest does not satisfy this checklist item because, under Qwest's Statement of Generally Available Terms (SGAT) in Minnesota, Qwest may refuse to build new interconnection trunks for a competitive LEC.¹⁷³ Specifically, AT&T alleges that, under the SGAT, Qwest may build to its own lower forecast of the competitive LEC's needs, if the competitive LEC's usage on a statewide basis is less than 50 percent of the competitive LEC's trunks in service, which may cause competitive LECs to risk trunk blocking.¹⁷⁴

52. We do not find that Qwest's trunk forecasting and utilization policies in the SGAT warrant a finding of checklist noncompliance. Qwest has a continuing obligation to provision interconnection trunks ordered by competitive LECs on terms and conditions that are just, reasonable, and nondiscriminatory.¹⁷⁵ If Qwest's forecast policy causes it to fail performance standards with regard to interconnection, it will be subject to penalties pursuant to

¹⁶⁹ 47 U.S.C. § 271(c)(2)(B)(i); *see also* Appendix C, paras. 17-24.

¹⁷⁰ *See* Minnesota Commission Comments at 8-9.

¹⁷¹ *See* Qwest Application App. A., Tab 3, Declaration of Thomas R. Freeberg, paras. 13-67. We also conclude that Qwest provides legally binding terms and conditions for collocation in its interconnection agreements and SGAT. *See* Minnesota SGAT § 8; *see also* Qwest Application App. A., Tab 4, Declaration of Margaret S. Bumgarner, paras. 13-91.

¹⁷² *See* *Qwest 9-State Order*, 17 FCC Rcd at 26473-74, para. 312 (citing, e.g., *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9133-37, paras. 201-06; *Verizon Massachusetts Order*, 16 FCC Rcd at 9092-95, 9098, paras. 183-87, 195). We find, based on the record, that Qwest's performance for interconnection satisfies its statutory obligations regarding interconnection quality and timeliness. *See also* Qwest Williams Decl., paras. 72-83. *See generally* Appendix B.

¹⁷³ *See* AT&T Comments at 25; AT&T Reply at 7 n.6.

¹⁷⁴ *See* AT&T Comments at 25; Minnesota SGAT § 7.2.2.8.6; *see also* Qwest Reply at 6 (explaining that § 7.2.2.8.6 of the Minnesota SGAT has been approved by the Minnesota Commission and has been part of the Minnesota SGAT since October 2001).

¹⁷⁵ *See* Qwest Reply at 6.